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Re: I90-067 (R89-157)

Dear Ms. Bainton:

Pursuant to A.R.S. § 15-253(B), we have reviewed your opinion letters to the Superintendents of Flowing Wells Unified School District, Marana Unified School District and Sunnyside Unified School District, wherein you concluded that the requirements of A.R.S. § 15-512(D) (section 15-512(D) or subsection (D)) apply to noncertificated and certificated employees of a school district. You also concluded that section 15-512(D) is unconstitutional because the affidavit requirement of the subsection was not expressed in the title of the bill enacting the legislation (House Bill 2368). Because we conclude that the statute is constitutional and is limited to noncertificated personnel who are hired after January 1, 1990, we revise your opinion.

A.R.S. § 15-512 provides, in pertinent part:

A. Noncertificated personnel initially hired by a school district after January 1, 1990 shall be fingerprinted as a condition of employment except for personnel who are required as a condition of licensing to be fingerprinted if the license is required for employment. The employee's fingerprints and the form prescribed in subsection D of this section shall be submitted to the school district within twenty days after the date an

employee begins work. A school district may terminate an employee if the information on the form provided under subsection D of this section is inconsistent with the information received from the fingerprint check. The school district shall develop procedures for fingerprinting employees.

B. Fingerprint checks shall be conducted pursuant to § 41-1750, subsection G.

. . . .

D. Personnel employed by the school district shall certify on forms that are provided by the school and notarized that they are not awaiting trial on and have never been convicted of or admitted committing any of the following criminal offenses in this state or similar offenses in another jurisdiction: [specifying offenses]

(Emphasis supplied.) You concluded that section 15-512(D), by not specifying the meaning of "Personnel employed by the school district," applies to both noncertificated and certificated personnel employed by a school district.

A.R.S. § 15-512 was enacted as part of House Bill 2368, a statutory scheme to fingerprint and investigate the criminal history of certain noncertificated personnel initially hired by a school district and for persons applying for certification by the State Department of Education. Laws 1989 (1st Reg. Sess.) Ch. 115, § 1. The title of House Bill 2368 provides:

AN ACT

RELATING TO EDUCATION; PRESCRIBING FINGERPRINTING REQUIREMENTS FOR CERTAIN NONCERTIFICATED PERSONNEL INITIALLY HIRED BY A SCHOOL DISTRICT AND FOR PERSONS APPLYING FOR CERTAIN CERTIFICATION BY THE DEPARTMENT OF EDUCATION; PRESCRIBING AN EXCEPTION; PRESCRIBING PROCEDURES AND COSTS; PRESCRIBING LIMITATION ON COSTS OF FINGERPRINT CHECKS TO EMPLOYEES OR PERSONNEL; PROVIDING FOR ISSUANCE, RENEWAL OR REVOCATION OF CERTIFICATE BASED ON FINGERPRINT CHECK; PRESCRIBING THAT A SCHOOL DISTRICT MAKE CERTAIN EFFORTS TO CONTACT PREVIOUS EMPLOYERS REGARDING A PERSON'S FITNESS FOR EMPLOYMENT; PRESCRIBING ESTABLISHMENT OF FINGERPRINT REVOLVING FUND; PROVIDING FOR SOURCE OF MONIES; PRESCRIBING USE OF MONIES;

PRESCRIBING IMMUNITIES FROM LIABILITY AND
EXCEPTIONS; AMENDING TITLE 15, CHAPTER 5,
ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING
SECTION 15-512, AND AMENDING TITLE 15, CHAPTER
5, ARTICLE 3, ARIZONA REVISED STATUTES, BY
ADDING SECTION 15-534.

The object of statutory interpretation is to determine the intent of the Legislature and to give effect to that intent. Martin v. Martin, 156 Ariz. 452, 457, 752 P.2d 1038, 1043 (1988). Expressed in the title of House Bill 2368 is the Legislature's intent that the act apply to fingerprinting noncertificated personnel (A.R.S. § 15-512) and to fingerprinting applicants for certification by the Department of Education (A.R.S. § 15-534). Laws 1989 (1st Reg. Sess.) Ch. 115. The purposes expressed in the title of a bill are relevant to determining the Legislature's intent in enacting the statute. State v. Barnett, 142 Ariz. 592, 597, 691 P.2d 683, 688 (1984).

Furthermore, we note that A.R.S. § 15-512 only authorizes a school district to use the affidavit required in subsection (D) to determine whether noncertificated employees may remain employed by the district pursuant to subsections (A) and (B) of the statute. A.R.S. § 15-512 does not authorize a school district to use the subsection (D) affidavit with respect to certificated personnel.^{1/} In interpreting a statute we may not assume that the Legislature intended to perform a futile act. State v. City Court of City of Tucson, 138 Ariz. 244, 246, 673 P.2d 988, 990 (App. 1983).

Apart from the limitation of subsection (D) to "noncertificated personnel" in section 15-512(A) and (B) and in the title of H.B. 2368, we note that A.R.S. § 15-534 was enacted as part of House Bill 2368 to provide that persons applying for certification after January 1, 1990 must comply with substantially the same fingerprinting and affidavit requirements as section 15-512. See A.R.S. § 15-534(A), (B), (D), (F); Laws 1989 (1st Reg. Sess.) Ch. 115, § 1 and 2. Thus, to conclude that section 15-512(D) also applies to certificated personnel would render superfluous the same requirements of applicants for certification with the Department of the Department of Education. Alternatively, such a construction would mean that applicants for certification would be required to submit to fingerprinting twice: as an applicant for a certificate from the Department of Education and as an employee of a school district.

^{1/}We note that school districts have only the authority expressly or impliedly granted by statute. Tucson Unified School District No. 1 v. Tucson Education Ass'n, 155 Ariz. 441, 443, 747 P.2d 602, 604 (App. 1987).

Whenever possible, a statute will be given such an effect that no clause, sentence or word is rendered superfluous, void, contradictory or insignificant. State v. Arthur, 125 Ariz. 153, 155, 6608 P.2d 90, 92 (App. 1980). Also, a statute should be given a construction that will accomplish the legislative intent and at the same time avoid an absurd result. Id. Therefore, we conclude that section 15-512(D) applies only to the "noncertificated personnel" whose fingerprints must be obtained and checked pursuant to section 15-512(A) and (B). This construction gives effect to the same requirements for applicants for certification in section 15-534, while avoiding results which the Legislature could not have intended.

You also concluded that a court would declare subsection (D) unconstitutional because the title of House Bill 2368 does not refer to the subsection's affidavit requirement. The relevant portion of the Arizona Constitution provides:

Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

Ariz. Const. art. IV, pt. 2, § 13.

The Arizona Supreme Court has interpreted this constitutional provision "to require that the title of a bill give notice of what is contained in the body of the act." State ex rel. Corbin v. Pickrell, 136 Ariz. 589, 593, 667 P.2d 1304, 1308 (1983). The court also has held that "Ariz. Const. art. 4, pt. 2, § 13 'should be interpreted liberally so as to uphold the constitutionality of an act if there is any legal basis for its validity.'" Id., quoting State v. Sutton, 115 Ariz. 417, 419, 565 P.2d 1278, 1280 (1977). Further, although the constitutional provision was designed to enable legislators and the public upon reading the title to know what to expect in the body of the act, it is not necessary "that the title must be a complete index to the act." White v. Kaibab Road Improvement District, 113 Ariz. 209, 211, 550 P.2d 80, 82 (1976).

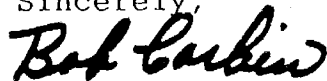
Applying the above principles, it is our opinion that the requirement of an affidavit in section 15-512(D), for comparison with the fingerprint check authorized in section 15-512(B), is included within the title of House Bill 2368, which specifies terms such as "Prescribing procedures" and "Prescribing fingerprinting requirements." See Pickrell, 136 Ariz. at 593, 667 P.2d at 1308 (language in the title of act, "prescribing applicability of certain remedies and penalties," included amendments to A.R.S. § 44-1527 which effectively made securities violations the basis for consumer fraud claims).

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Therefore, we conclude that subsection (D) applies only to noncertificated personnel hired by a school district after January 1, 1990. We also conclude that the affidavit requirement of subsection (D) is a matter which falls within the scope of the bill's title.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Corbin", written in a cursive style.

BOB CORBIN

Attorney General

BCC:LPF:LSP/dlf